

Message Text

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ACTION DLOS-04

INFO OCT-01 ARA-06 IO-11 ISO-00 FEA-01 ACDA-05 AGR-05

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COME-00 DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

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P R 042153Z FEB 76

FM AMEMBASSY QUITO

TO SECSTATE WASHDC PRIORITY 8920

INFO AMEMBASSY LIMA

AMEMBASSY MEXICO

AMEMBASSY SANTIAGO

USMISSION USUN NEW YORK

USMISSION GENEVA

C O N F I D E N T I A L SECTION 1 OF 2 QUITO 1013

GENEVA PASS LOS TEAM

E.O. 11652: GDS

TAGS: PLOS, EFIS, EC

SUBJECT: CONSULTATIONS WITH ECUADOR ON LOS ARTICLE 53 AND TUNA

REF: MEXICO 1354

1. SUMMARY: U.S. TEAM LED BY AMBASSADORS JOHN NORTON MOORE, ROZANNE RIDGWAY AND BREWSTER MET WITH ECUADOREAN TEAM LED BY AMBASSADORS RAFAEL GARCIA VFWASCO, FOREIGN MINISTRY LEGAL ADVISOR, AND TEODORO BUSTAMANTE, FOREIGN MINISTRY ADVISOR ON TERRITORIAL SOVEREIGNTY, TO SEEK INFORMAL UNDERSTANDING ON ARTICLE 53 BASED ON GALINDO-POHL TEXT, AND TO EXPLORE REGIONAL AGREEMENT FLOWING FROM IT WHICH WOULD END ECUADOR TUNA DISPUTE. U.S. AND GOE TEAMS

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REVIEWED GALINDO-POHL TEXT AS WELL AS INFORMAL UNDERSTANDING

REACHED BETWEEN MEXICO AND U.S. INFORMAL UNDERSTANDING WAS REACHED WITH GOE ON BASIS OF TEXT WORKED OUT WITH MEXICO, WITH EXCEPTION OF PORTIONS OF PARAGRAPHS ON COASTAL PREFERENCE AND UNIFORM FEES. A BASIS FOR AGREEMENT ON AREAS OF DIFFERENCE WAS EXPLORED WHICH MAY PROVE TO BE FOUNDATION FOR AGREEMENT WHEN GALINDO-POHL GROUP MEETS IN N.Y. IN MARCH AND SUBSEQUENT REGIONAL AGREEMENT ON TUNA FLOWING FROM IT. END SUMMARY.

2. U.S. AND ECUADOREANS TEAMS MET FOR TWO DAYS OF INFORMAL DISCUSSIONS ON LOS ARTICLE ON HIGHLY MIGRATORY SPECIES. THE U.S. TEAM WAS LED BY AMBASSADORS MOORE, RIDGWAY AND BREWSTER; THE ECUADOREANS BY AMBASSADORS GARCIA AND BUSTAMANTE. PRESENT ALSO FOR THE TALKS WERE ARTURO LECARO, DIRECTOR GENERAL OF THZ POLITICAL DEPARTMENT, AND PATRICIO PALACIOS, DIRECTOR OF THE DEPARTMENT OF TERRITORIAL SOVEREIGNTY FROM THE ECUADOREAN FOREIGN MINISTRY; AND BLONDIN, WILLIAMS, COLSON, AND COOR ON THE U.S. SIDE. THE BASIS FOR DISCUSSION WAS THE GALINDO-POHL TEXT DEVELOPED AT THE NEW YORK TUNA TALKS AND THE U.S.-MEXICO INFORMAL UNDERSTANDING DEVELOPED IN MEXICO CITY REPORTED REFTEL. U.S. AND GOE TEAMS REACHED UNDERSTANDING ON AN

INFORMAL AND PERSONAL BASIS ON A TEXT WHICH IS SIMILAR TO INFORMAL U.S.-MEXICAN TEXT, AND WHICH SETS OUT THE AREAS OF AGREEMENT AND DISAGREEMENT BETWEEN U.S. AND ECUAB4. TEXT IS REPRODUCED BELOW.

3. GOE AGREEMENT TO TEXT IS OF COURSE SUBJECT TO ITS OVERALL RESERVATION REGARDING THE ECONOMIC ZONE CONCEPT. BARRING THAT RESERVATION, GOE WAS WILLING TO ACCEPT MANY PROVISIONS OF U.S.-MEXICAN UNDERSTANDING. GOE ACCEPTED PARAGRAPH 1 OF TEXT BELOW WHICH WAS COMMON ELEMENT IN U.S.-MEXICAN TEXT. GOE DID NOT PRESS FOR VARIANT B IN GALINDO-POHL TEXT; BUT INDICATED THEY WERE LOOKING FOR LANGUAGE WHICH WOULD MAKE IT CLEAR THAT GENERAL ECONOMIC ZONE PRINCIPLES OF SINGLE NEGOTIATION TEXT APPLY IN ABSENCE OF AGREEMENT WITHIN THE ORGANIZATION.

4. GOE ACCEPTED PARAGRAPH 2 OF TEXT BELOW WHICH IS PRECISELY SAME LANGUAGE WORKED OUT WITH MEXICO.

5. REGARDING PARAGRAPH 3 OF TEXT BELOW, GOE SOUGHT UNOBJECTIONABLE DRAFTING CHANGES WHICH CLARIFIED U.S.-MEXICO TEXT AND TRACKED MORE CLOSELY WITH THE INTENT OF CONFIDENTIAL

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THE PARAGRAPH.

6. PARAGRAPH 4 OF TEXT BELOW WAS PARAGRAPH 3 OF GALINDO-POHL TEXT AND WAS ACCEPTED WITHOUT CHANGE BY ECUADOR AND MEXICO.

7. PARAGRAPH 5 OF TEXT BELOW HAS BEEN MODIFIED BY ELIMINATING NON-CONSERVATION ASPECTS PREVIOUSLY CONTAINED IN

THE PARAGRAPH AND NOW DEALS SOLELY WITH CONSERVATION MATTERS. GOE MADE IT CLEAR THAT BECAUSE OF ELIMINATION OF CLAUSE REGARDING THE DEVELOPMENT OF COASTAL STATE HARVESTING CAPACITY SOME SUCH PRINCIPLE MUST BE INCLUDED ELSEWHERE IN ARTICLE 53, AND URGED THAT THE NOTION OF SPECIAL CONSIDERATION BE ACCORDED TO DEVELOP THE FISHING CAPACITY OF DEVELOPING COASTAL STATES BE INCLUDED IN THE ARTICLE. U.S. POSITION WAS THAT COASTAL STATE PRIORITY INCLUDED DEVELOPMENT OF HARVESTING CAPACITY OF COASTAL STATES, AND THAT ADDITIONAL AID TO DEVELOPING COUNTRIES SHOULD NOT BE PART OF REGIONAL ARRANGEMENT.

8. REGARDING PARAGRAPH 6 OF TEXT BELOW, GOE BELIEVED THAT VARIANT A DID NOT GO FAR ENOUGH IN RECOGNIZING THEIR RIGHTS OVER HIGHLY MIGRATORY SPECIES IN THE EXCLUSIVE ECONOMIC ZONE, AND HAD SOME DIFFICULTY IN ACCEPTING EITHER THE WORD "PREFERENCE" OR "PRIORITY." GOE INSISTED ON MAINTAINING LANGUAGE OF PARAGRAPH 7, VARIANT B 1, OF GALINDO-POHL TEXT TO REFLECT COASTAL STATE RIGHTS OVER THE RESOURCES IN ITS ECONOMIC ZONE. VARIANT B OF TEXT BELOW IS A CENTRAL FACTOR IN GOE ACCEPTANCE OF REMAINDER OF ARTICLE, PARTICULARLY DELETION OF PARAGRAPH 12 IN THE MEXICAN DRAFT. GOE WOULD LIKE TO TIE LANGUAGE REGARDING SPECIAL NEEDS OF THE DEVELOPING STATES INTO PARAGRAPH 6 OF TEXT BELOW AND SUGGESTED A POSSIBLE AMENDMENT TO VARIAN A WHICH WOULD MEET THEIR NEEDS. THAT IS: FOLLOWING THE FIRST SENTENCE OF PARAGRAPH 6, VARIANT A OF TEXT BELOW ADD THE FOLLOWING CLAUSE: "TAKING INTO CONSIDERATION THE SPECIAL NEEDS FOR DEVELOPMENT OF THE HARVESTING CAPACITY OF THE RESPECTIVE DEVELOPING COASTAL STATES."

9. REGARDING PARAGRAPH 7 OF TEXT BELOW, GOE WANTED TO SEE CONFIDENTIAL

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THIS PARAGRAPH PROVIDE FOR FEES FOR ACCESS TO THE ECONOMIC ZONE RATHER THAN BASED ON FISH CAUGHT, SINCE GOE BELIEVES THAT A SYSTEM BASED ON FISH CAUGHT WOULD BE DIFFICULT TO ENFORCE. GOE ALSO QUESTIONED WHETHER IT WAS ADVISABLE TO ADDRESS THIS SPECIFIC ISSUE IN ARTICLE 53 WHEN OTHER SPECIFIC ISSUES ARE NOT ADDRESSED. GOE EXPRESSED WILLINGNESS TO EXPLORE WITH U.S. EXPERTS TECHNICAL ASPECTS OF ENFORCEMENT SYSTEM.

10. GOE READILY ACCEPTED U.S. VOTING PARAGRAPH WHICH CAUSED DIFFICULTY WITH THE MEXICANS. GOE DID SUGGEST DELETION OF CLAUSE IN SECOND SENTENCE WHICH WOULD HAVE LIMITED COASTAL STATE VETO POWER TO ITS OWN EXCLUSIVE ECONOMIC ZONE. SINCE ALL COASTAL STATES MUST AGREE PER FIRST SENTENCE OF PARAGRAPH 8 OF TEXT BELOW, U.S. AGREED

WITH GOE SUGGESTION.

11. PARAGRAPHS 9, 10 AND 11 OF TEXT BELOW ARE IDENTICAL
WITH MEXICAN TEXT AND RELEVANT GALINDO-POHL PARAGRAPHS.
GOE ACCEPTED THESE PARAGRAPHS WITHOUT COMMENT.

12. GOE AGREED THAT VARIANT A OF PARAGRAPH 10 OF
GALINDO-POHL TEXT, WHICH BECAME VARIANT A OF PARAGRAPH 12
OF MEXICAN TEXT, WAS ACCEPTABLE. THEREFORE, IN TEXT
BELOW REFERENCE TO ARTICLES 103-107 OF SINGLE NEGOTIATING
TEXT HAS BEEN DELETED. U.S. AND GOE RECOGNIZED THAT AS
PRACTICAL MATTER IN ABSENCE OF AGREEMENT WITHIN REGIONAL
ORGANIZATION GENERAL PROVISIONS OF SINGLE NEGOTIATING
TEXT WOULD APPLY WITHIN ECONOMIC ZONE WITH FREE FISHING
BEYOND.

13. GOE ACCEPTED MARINE MAMMAL PARAGRAPH WORKED OUT WITH
MEXICO.

14. TEXT FOLLOWS: PARAGRAPH 1 THE COASTAL STATE, IN
THE EXERCISE OF THE SOVEREIGN RIGHTS RECOGNIZED IN THE
PRESENT CONVENTION, WILL REGULATE, WITHIN ITS EXCLUSIVE
ECONOMIC ZONE, FISHING FOR THOSE HIGHLY MIGRATORY SPECIES

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INFO AMEMBASSY LIMA
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WHICH ARE LISTED IN THE ANNEX, IN ACCORDANCE WITH THE PROVISIONS OF THE PRESENT ARTICLE.

(IT IS UNDERSTOOD THAT THE PARTICIPANTS RESERVE THEIR POSITIONS AUTH RESPECT TO THE REFERENCES TO SOVEREIGN RIGHTS AND THE EXCLUSIVE ECONOMIC ZONE IN PARAGRAPH I AND THROUGHOUT THE INFORMAL TEXT. IT IS FURTHER UNDERSTOOD THAT A REGIONAL AGREEMENT FLOWING FROM ARTICLE 53 NEED NOT MAKE REFERENCE TO PARAGRAPH I AND COULD PRESERVE THE JURIDICAL POSITION OF ALL PARTIES WITH APPROPRIATELY NEUTRAL LANGUAGE.)

PARAGRAPH 2. THE COASTAL STATE AND OTHER STATES WHOSE NATIONALS HAVE BEEN FISHING FOR HIGHLY MIGRATORY
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SPECIES IN THE REGION SHALL COOPERATE THROUGH AN APPROPRIATE INTERNATIONAL ORGANIZATION FOR THE PURPOSE OF ENSURING THE CONSERVATION AND OPTIMUM UTILIZATION OF SUCH SPECIES YATHROUGHOUT THE REGIONB IN REGIONS WHERE NO APPROPRIATE INTERNATIONAL ORGANIZATION EXISTS, COASTAL STATES AND THE OTHER STATES WHOSE NATIONALS HAVE BEEN FISHING FOR THOSE SPECIES IN THE REGION SHALL COOPERATE TO ESTABLISH SUCH AN ORGANIZATION AND PARTICIPATE IN ITS WORK. THE REGIONAL ORGANIZATION MAY COOPERATE WITH OTHER INTERNATIIONAL ORGANIZATIONS FOR THE PURPOSE OF CONNSERVING THE RESOURCE.

PARAGRAPH 3. COASTAL STATES OF A GEOGRAPHIC OR ECOLOGIC REGION ANDMSTATES WHOSE NATIONALS HAVE BEEN FISHING FOR HIGHLY MIGRATORY SSPECIES WITHIN THAT REGION SHALL BE MEMBERS OF THE RESPECTIVE REGIONAL ORGANIZATION.

ON THE BASIS OF THE BEST SCIENTIFIC EVIDENCE AND OTHER PERTINENT INFORMATION, THE ORGANIZATION SHALL DETERMINE WHEN THE RESOURCE IS FULLY UTILIZED.

NATIONALS OF STATES WHOSE NATIONALS HAVE NOT BEEN FISHING FOR HIGHLY MIGRATORY SPECIES IN A REGION MAY PARTICIPATE IN THE FISHERY ONLY WHEN IT IS NOT FULLY UTILIZED, AND SUCH STATES SHALL BE MEMBERS OF THE

ORGANIZATION, WITH RESPECT TO ANY SUCH SPECIES NOT FULLY UTILIZED.

PARAGRAPH 4. ON THE BASIS OF THE BEST AVAILABLE SCIENTIFIC EVIDENCE AND OTHER PERTINENT INFORMATION THE ORGANIZATION SHALL FORMULATE MEASURES, THAT SHALL BE AGREED UPON BY THE MEMBER STATES, IN ACCORDANCE WITH THE RESPECTIVE RULES OF PROCEDURE OF THE ORGANIZATION, DESIGNED TO ENSURE THE OBJECTIVES SET OUT IN PARAGRAPH TWO.

PARAGRAPH 5. IN FORMULATING CONSERVATION MEASURES, THE ORGANIZATION SHALL TAKE INTO ACCOUNT ALL RELEVANT FACTORS AND CIRCUMSTANCES, INCLUDING, INTER ALIA, AN ESTIMATE OF THE FISH POPULATIONS; THEIR MIGRATORY RANGE AND THE DEGREE OF THEIR EXPLOITATION; THE NEED TO PREVENT OVER-EXPLOITATION OF THE SPECIES, AND THE EFFECTS OF THEIR CAPTURE ON ASSO-
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CIATED OR DEPENDENT SPECIES WITH A VIEW TO MAINTAINING OR RESTORING FISH POPULATIONS ABOVE LEVELS AT WHICH THEIR REPRODUCTION MAY BECOME THREATENED. MEASURES SHALL ENSURE THAT THE SPECIES ARE NOT ENDANGERED BY OVER-EXPLOITATION AND SHALL BE DESIGNED TO MAINTAIN OR RESTORE POPULATIONS OF HARVESTED SPECIES AT LEVELS WHICH CAN

PRODUCE MAXIMUM SUSTAINABLE YIELD, AS QUALIFIED BY RELEVANT ENVIRONMENTAL AND ECONOMIC FACTORS.

PARAGRAPH 6. VARIANT A. THE ORGANIZATION SHALL RECOGNIZE THE PRIORITY OF THE COASTAL STATE IN THE HARVESTING OF HIGHLY MIGRATORY SPECIES IN ITS EXCLUSIVE ECONOMIC ZONE,(THE ORGANIZATION IN ADOPTING MEASURES SHALL DETERMINE THE MANNER IN WHICH SUCH PRIORITY SHALL BE REFLECTED.

PARAGRAPH 6. VARIANT B. THE COASTAL STATE HAS THE SAME RIGHTS OVER THE HIGHLY MIGRATORY SPECIES IN ITS EXCLUSIVE ECONOMIC ZONE AS IT HAS OVER THE OTHER RESOURCES IN THE ZONE, IN ACCORDANCE WITH THE PROVISIONS OF THE PRESENT PART. NEVERTHELESS "

PARAGRAPH 6. COMMON ELEMENTS. THAT PART OF THE ALLOWABLE CATCH WHICH THE COASTAL STATE DOES NOT HAVE THE CAPACITY TO HARVEST SHALL BE MADE AVAILABLE TO OTHER MEMBER STATES, IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE ORGANIZATION WHICH TAKE INTO ACCOUNT INTER ALIA NORMAL CATCH AND EXISTING FISHING PATTERNS THROUGHOUT THE REGION.

PARAGRAPH 7. VARIANT A. FEES SHALL BE PAID TO THE COASTAL STATE FOR FISH CAUGHT WITHIN ITS ECONOMIC ZONE, AS THE CONDITION FOR ACCESS TO FISHING WITHIN THAT ZONE.

PARAGRAPH 7. VARIANT B. FOREIGN FLAG VESSELS SHALL PAY FEES TO THE COASTAL STATE AS A CONDITION FOR ACCESS TO FISHING WITHIN THE EXCLUSIVE ECONOMIC ZONE.

PARAGRAPH 7. COMMON ELEMENTS. IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND THOSE OF THE RESPECTIVE REGIONAL ORGANIZATION. THE ORGANIZATION SHALL TAKE MEASURES FOR THIS ESTABLISHMENT OF REASONABLE UNIFORM FEES
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TO BE APPLIED IN EACH REGION, TAKING THE VIEWS OF MEMBER STATES INTO ACCOUNT, AND SHALL MAKE APPROPRIATE ARRANGEMENTS WITH THE COASTAL STATES REGARDING THE COLLECTION OF SUCH FEES.

PARAGRAPH 8. UNLESS THE MEMBER STATES AGREE ON A DIFFERENT PROCEDURE, THE ADOPTION OF MEASURES BY THE ORGANIZATION SHALL REQUIRE A TWO-THIRDS MAJORITY OF THE STATES PRESENT AND VOTING, INCLUDING THE AGREEMENT OF ALL COASTAL STATES OF THE REGION PRESENT AND VOTING. THE ADOPTION OF MEASURES WHICH AFFECT THE EXCLUSIVE ECONOMIC ZONE OF A COASTAL STATE SHALL REQUIRE THE AGREEMENT OF SUCH STATE. THE ADOPTION OF MEASURES WHICH AFFECT FISHING BEYOND THE ECONOMIC ZONE BY ANY STATE SHALL REQUIRE THE AGREEMENT OF SUCH STATE WITH RESPECT TO FISHING BY SUCH STATE BEYOND THE ECONOMIC ZONE.

PARAGRAPH 9. THE MEMBER STATES OF THE ORGANIZATION SHALL ENSURE THAT THEIR NATIONAL LEGISLATION IS IN AGREEMENT WITH THE MEASURES AGREED ON THROUGH THE ORGANIZATION. THE MEMBER STATES SHALL ALSO ENSURE THAT THEIR NATIONAL LAW COMPLIES WITH THE AGREED MEASURES ON FISHING FOR HIGHLY MIGRATORY SPECIES.

PARAGRAPH 10. SHIPS WHICH ARE DULY REGISTERED IN A STATE AND WHICH HAVE THE RIGHT TO FLY ITS FLAG SHALL BE CONSIDERED TO BE NATIONALS OF SUCH STATE FOR THE PURPOSES OF THE PRESENT ARTICLE. STATES MUST EFFECTIVELY EXERCISE THEIR JURISDICTION AND CONTROL IN ADMINISTRATIVE, TECHNICAL AND SOCIAL MATTERS OVER SHIPS FLYING THEIR FLAG.

PARAGRAPH 11. IN ACCORDANCE WITH ARTICLE 60, THE COASTAL STATE SHALL ADOPT THE NECESSARY MEASURES TO ENSURE, WITHIN ITS EXCLUSIVE ECONOMIC ZONE, COMPLIANCE BY ALL SHIPS WITH THE APPLICABLE FISHING REGULATIONS. THE MEMBER STATES OF THE ORGANIZATION WILL AGREE ON EFFECTIVE ARRANGEMENTS FOR THE ENFORCEMENT, WITH RESPECT TO MEMBERS, OF THE AGREED MEASURES BEYOND THE EXCLUSIVE ECONOMIC ZONE.

PARAGRAPH 12. NOTHING IN THE PRESENT CONVENTION SHALL
RESTRICT THE RIGHT OF A COASTAL STATE WITHIN ITS EXCLUSIVX
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ECONOMIC ZONE, OR AN INTERNATIONAL ORGANIZATION WITH
RESPECT TO ITS MEMBERS FOR THE STOCK AS A WHOLE, WO
APPROPRIATE, TO PROHIBIT OR LIMIT THE EXPLOITATION OF
MARINE MAMMALS. STATES SHALL COOPERATE EITHER DIRECTLY
OR THROUGH APPROPRIATE INTERNATIONAL ORGANIZATIONS WITH
A VIEW TO THE PROTECTION AND MANAGEMENT OF MARINE MAMMALS.
END TEXT.

15. TALKS WERE CONDUCTED IN FRANK AND CORDIAL CLIMATE,
WITH BOTH SIDES EMPHASIZING THE INFORMAL AND PERSONAL
NATURE OF THE TWRKS AND THE IMPORTANCE OF NARROWING THE
DIFFERENCES PRIOR TO MARCH MEETING OF GALINDO-POHL
GROUP. DISCUSSIONS WERE THE BEST TO DATE WITH ECUADOREANS
AND SIDES ARE CLOSE BOTH ON PROCEDURE TO BE USED TO
RESOLVE TUNA DISPUTE AND ON SUBSTANCE OF ARTICLE 53 ON
TUNA WHICH WOULD BECOME THE BASIS FOR A NEW REGIONAL AGREE-
MENT. BREWSTER

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